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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/091,788	09/08/1998	KENJI ONO	822-004	5329

25191 7590 03/08/2002

BURR & BROWN  
PO BOX 7068  
SYRACUSE, NY 13261-7068

EXAMINER

SHARMA, RASHMI K

ART UNIT	PAPER NUMBER
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3651

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DATE MAILED: 03/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/091,788

Applicant(s)

Kenji Ono

Examiner

Rashmi Sharma

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 13, 2002
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2 and 5-14 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☒ All b) ☐ Some\* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the alternate conveying means in claim 2 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 14, 2, 5, 6, 8, 10-12 are rejected under 35 U.S.C. 102(b) as being unpatentable by Brandenfels (U.S. patent number 4,750,578).

Brandenfels discloses a dismantlable and collapsible utility cart comprising a driving portion selectively driving the vehicle forward or backward, a rotatable seat (16) being swivelable 360 degrees or removable, a steering handle (110/156) comprising at least one steerable wheel (92) and a reversible steering handle (110/156) being rotatable from one side of a

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hinge point to an opposite side of the hinge point (see figure 4), whereby the vehicle can be operated forward or backward by an operator riding thereon and the vehicle can be run backward with an operator not riding on the vehicle, a truck portion (20) having a removable front wheel portion, capable of being attached to another conveying means (see figure 1), also having the driving portion and the steering portion at a front end portion of the truck portion (20), handle stems (156) fixed at an upper end of the front wheel portion, stems adapted to be turned to rise and fall longitudinally, a handle bar (see figure 2) fixed to the handle stems (156) at a right angle with respect to the handle stems (156), whereby the bar handle arranged for the forward run on a back side of the steerable wheel and for the forward run is arranged on the front side of the front wheel (see figure 4). Brandenfels also discloses a vehicle being self-propelled at a speed equal to human walking speed, the driving portion comprising an electric motor (136) having a small capacity and two rear wheels (26) at a rear end portion.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 7, 9 and 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brandenfels (U.S. patent number 4,750,578) in view of Brown (U.S. patent number 5,010,973).

Brandenfels does not disclose arm rests for the seat, a supporting bar made removable for supporting the operator when in a standing position from behind or a steering wheel.

Brown does disclose a steering wheel (33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the vehicle of Brandenfels with the steering wheel of Brown's invention as a matter of design choice. They are both functionally equivalent to one another. Providing for seat arm rests and a support bar is well within the purview of one having ordinary skill in the art to provide a means for stabilizing an operator when in the standing position. It is also well within the scope of one having ordinary skill in the art to use a support bar in order to stabilize the rider while riding on the vehicle.

#### ***Response to Arguments***

6. Applicant's arguments filed 2/13/2002 have been fully considered but they are not persuasive.

Applicant argues that there is no driving portion which selectively drives the vehicle forward or backwards is not disclosed in Brandenfels, however upon reviewing the above rejection, one can clearly see that the driving portion within this reference can be seen in figure 1 at the front end portion (far left area of figure 1). In fact, the applicant contradicts himself by

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stating a lack of disclosure of a driving portion with regard to claim 14, while regarding claim 2 the applicant recites, "In Brandenfels '578, there is disclosure that a driving portion and a steering portion are mounted on a front wheel support.....".

Applicant argues that the seat is removable but not swivelable. However, in order for the seat to be removed it must be able to be releasably attached to the seat stem (48) and thereby inherently be swivelable upon the dismantling of the seat. Applicants should note that swivelable and removable seats are well known in the art.

In response to applicant's argument that the front wheel portion having a driving portion can be attached to another conveying means, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that the handle bar arranged for the forward run on the backside of the front wheel because the operator riding on the vehicle can easily hold it to operate the vehicle, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of

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performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that a steering handle is arranged for the forward run on the backside of the front wheel because the operator riding on the vehicle can easily hold it to operate the vehicle in claim 6 and a swivelable seat oriented in a desired direction to simplify getting on and off the vehicle for the rider in claim 8, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Regarding claim 7, the examiner would like to point out that the arm rests claimed were rejected under 35 U.S.C. 103 and the subject matter claimed is not disclosed in Brandenfels. Utilizing arm rests in combination with a seat structure is obvious to one having ordinary skill in the art.

Applicant argues that a support bar, the cart being propelled at a speed which is substantially equal to human walking speed and a steering wheel are not obvious variations

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within the purview of one having ordinary skill in the art, however the applicant fails to explain why. The above rejection still stand and can be reviewed in the above rejection.


***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this application should be directed to Rashmi Sharma who can be reached at 703-306-5952 between the hours of 8:30 a.m. 5:00 p.m. Monday through Friday.

Any general inquiry relating to the status of this application should be directed to the Group receptionist who can be reached at 703-308-1113.

  
CHRISTOPHER P. ELLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600